

February 18, 2009

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-5151

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UNITED STATES
DISTRICT COURT

In Regard to the Matter of:

Bayside State Prison
Litigation

OPINION/REPORT
OF THE
SPECIAL MASTER

ANTHONY DOBSON

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * * *
WEDNESDAY, FEBRUARY 18, 2009
* * * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

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4 Transcript of proceedings in the above
5 matter taken by Theresa O. Mastroianni, Certified
6 Court Reporter, license number 30X100085700, and
7 Notary Public of the State of New Jersey at the
8 United States District Court House, One Gerry Plaza,
9 Camden, New Jersey, 08102, commencing at 2:10 PM.
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1 JUDGE BISSELL: I am now reopening
2 proceedings in the case brought by Anthony Dobson,
3 civil number 08-5151.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Dobson.

13 As finalized after review under Local
14 Civil Rule 52.1, this transcript will constitute the
15 written report required under paragraph seven of the
16 Order of Reference to a Special Master.

17 Mr. Dobson was a resident of A Unit and
18 on August 2, 1997 residents of this unit were moved
19 to the gym for the search of the cells in that unit.
20 The contemporaneous log reflects that they were out
21 at 4:30 PM and back in their cells at 9:35 PM.

22 He testified here before this master in
23 these proceedings to three incidents that arose in
24 the course of the day. At pages 81 and 82 of his
25 transcript generated on October 30, 2008, he

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1 testified that his extraction from his cell was
2 uneventful, but that he was struck in the side "on
3 the flat" area of the unit. I find that that's
4 essentially synonymous with the day area or common
5 area near the exit from the unit. He also indicates
6 that he was kicked in the thigh once on his way to
7 the gym. However, he acknowledged that there were no
8 injuries inflicted by either of these events.

9 Frankly, this is somewhat rougher treatment than one
10 might hope in terms of his being moved, but we are
11 not dealing here with a state tort claims act case.
12 I do find that the touchings involved here, while
13 perhaps regrettable, were not so severe as to rise to
14 the levels of excessive force and intentional
15 infliction of pain and punishment.

16 At pages 86 through 88 of his
17 transcript he describes himself as having been
18 assaulted in the back of the gym. He was punched in
19 the mouth at which point his teeth were broken in
20 part. He was on the ground as a result of that punch
21 and then was kicked and punched some six to 12 times
22 right there at the back of the gym. I find that this
23 testimony is not credible. If believed, it would
24 have taken place in full view of a large population
25 of inmates, corrections officers and plain clothes

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1 people in the gymnasium itself. And these, of
2 course, would include one or more ombudsmen who might
3 have been on duty at the gym. It's just not credible
4 that this type of conduct would have taken place and
5 that the SOG officers would have risked the obvious
6 discipline that would likely ensue if they were
7 observed in this type of activity. This is quite a
8 different matter than something that may occur either
9 inside a cell or under other circumstances within a
10 unit where observation is much less likely.

11 Indeed, the ombudsman on duty at the
12 gym, Mr. Turner, through his report, Defendant's
13 Exhibit 480, reported no such incident or events on
14 that date even though, as I said, he was in the gym
15 and specifically referred to the inmates from A Unit
16 as being there at the time.

17 The third incident arose somewhat
18 curiously in the course of his cross-examination at
19 pages 116 through 118 of the transcript. He
20 describes this event as an alleged beating in his
21 cell on A Unit by SOG officers at a later point,
22 whether on August 2 or perhaps shortly thereafter is
23 immaterial. This account of this assault arose for
24 the very first time, at least on this record, as a
25 volunteered statement during his cross-examination.

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1 He never stated this on his direct testimony before
2 me, it was revealed on cross-examination that he had
3 never recounted this in any pretrial discovery that's
4 part of the record here and it was interesting
5 because among the predicates for the ability of the
6 SOG officers apparently to act in this fashion was
7 the fact that the SOG officers, according to Mr.
8 Dobson, were now running the show and handling the
9 duties of corrections officers in his unit. This is
10 entirely contrary to any testimony that's ever been
11 given in these proceedings and completely
12 contradicted by the testimony of Officers Hall and
13 Bennett who verified quite completely that Bayside
14 officers remained in control and supervision as the
15 housing officers in A Unit and in the other units,
16 and that the SOGs duties were otherwise, most
17 particularly transports.

18 Consequently, based upon its late
19 arrival in the record here, this Master concludes
20 that this recounting of a supposed beating in his
21 cell by SOG officers is, indeed, a recent
22 fabrication; not only because it's arising for the
23 first time, but also because it's further impeached
24 by the lack of credibility of his testimony
25 concerning the assault in the gym and the refutation

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1 of the basic underlying premise that the SOGs were
2 now running the units which I find was not the case.

3 Accordingly, as to any and all of the
4 purported incidents of assaults inflicted upon him, I
5 find against Mr. Dobson and in favor of the defense.

6 Finally, although not every item of
7 evidence has been discussed in this opinion/report,
8 all evidence presented to the Special Master was
9 reviewed and considered.

10 For the reasons set forth above, I
11 recommend in this report that the district court
12 enter an order and judgment of no cause for action
13 with regard to Anthony Dobson.

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C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Theresa O. Mastroianni
Theresa O. Mastroianni, C.S.R.
Notary Public, State of New Jersey
My Commission Expires May 5, 2010
Certificate No. XIO857
Date: February 19, 2009

<p>A</p> <p>ability 7:5 account 6:23 accurate 9:6 acknowledged 5:7 act 5:11 7:6 action 1:2 8:12 9:11,14 activity 6:7 Agreement 4:7 al 1:8 allegations 4:11 alleged 6:20 Anthony 1:6 4:2 8:13 apparently 7:6 applicable 4:11 applied 4:8 area 5:3,4,5 arising 7:22 arose 4:23 6:17 6:23 arrival 7:19 assault 6:23 7:25 assaulted 5:18 assaults 8:4 attorney 9:10,12 ATTORNEYS 3:7,12,16 Audubon 2:21 August 4:18 6:22</p>	<p>BLACK 3:14 BLACKWOOD 3:15 broken 5:19 brought 4:2</p> <p>C</p> <p>C 3:2,5 9:1,1 Camden 2:9 3:11 case 4:2 5:11 8:2 cause 8:12 cell 5:1 6:9,21 7:21 cells 4:19,21 Certificate 9:21 Certified 2:5,19 9:4 certify 9:5,9 charges 4:10 circumstances 6:9 civil 1:2 4:3,14 claims 5:11 clothes 5:25 commencing 2:9 Commission 9:20 common 5:4 completely 7:11 7:13 concerning 7:25 concludes 7:19 conduct 6:4 Consequently 7:18 considered 8:9 constitute 4:14 contemporane... 4:20 contradicted 7:12 contrary 7:10 control 7:14 corrections 5:25 7:9</p>	<p>counsel 9:10,12 course 4:24 6:2 6:18 court 1:1 2:6,8 2:19 8:11 credibility 7:24 credible 5:23 6:3 cross-examina... 6:18,25 7:2 curiously 6:18 C.S.R 9:19</p> <p>D</p> <p>D 3:14 date 6:14 9:8,21 day 4:24 5:4 dealing 5:11 decision 4:8 Defendants 1:9 3:7 Defendant's 6:12 defense 8:5 describes 5:17 6:20 different 6:8 direct 7:1 directives 4:5 discipline 6:6 discovery 7:3 discussed 8:7 district 1:1,1 2:8 8:11 Dobson 1:6 4:2 4:12,17 7:8 8:5 8:13 duties 7:9,16 duty 6:3,11</p> <p>E</p> <p>E 3:2,2 9:1,1 either 5:8 6:8 employee 9:10 9:12 ensue 6:6 enter 8:12</p>	<p>entirely 7:10 ESQUIRE 3:4,5 3:10,14 ESQUIRES 3:9 essentially 5:4 et 1:8 event 6:20 events 5:8 6:13 evidence 8:7,8 excessive 5:14 Exhibit 6:13 exit 5:5 Expires 9:20 extent 4:11 extraction 5:1</p> <p>F</p> <p>F 9:1 fabrication 7:22 fact 7:7 facts 4:8 fashion 7:6 FAUVER 1:8 favor 8:5 February 1:15 9:21 finalized 4:13 Finally 8:6 financially 9:13 find 5:3,12,22 8:2,5 first 6:24 7:23 flat 5:3 force 5:14 foregoing 9:5 FORMAROLI 2:18 forth 4:9 8:10 9:8 Frankly 5:9 full 5:24 further 7:23 9:9</p> <p>G</p> <p>generated 4:25 Gerry 2:8</p>	<p>given 7:11 GRANT 3:5 GRIEGEL 3:4,4 ground 5:20 guiding 4:7 gym 4:19 5:7,18 5:22 6:3,12,14 7:25 gymnasium 6:1</p> <p>H</p> <p>II 1:8 Hall 7:12 HAMILTON 3:6 handling 7:8 hereinbefore 9:8 HIGHWAY 3:6 HONORABLE 1:20 hope 5:10 Horse 2:20 3:14 House 2:8 housing 7:15</p> <p>I</p> <p>immaterial 6:23 impeached 7:23 incident 6:13,17 incidents 4:23 8:4 include 6:2 indicates 5:5 inflicted 5:8 8:4 infliction 5:15 injuries 5:8 inmates 5:25 6:15 inside 6:9 instructions 4:10 intentional 5:14 interested 9:13 interesting 7:4 involved 5:12 issued 4:4</p>
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